

Correcting Kellner

A critique of Dr. Hugo Maria Kellner's claims about Holy Orders, Baptism, and corruption in the 1917 Code of Canon Law.

By Christopher Conlon
(2013)

Near the end of Dr. Hugo Maria Kellner's 1977 article no.72, entitled "The final Unmasking of 'Archbishop Lefebvre's Satan-Inspired, 'Traditionalist' Imposture by the Detection of the Invalidity of His Own Orders", Dr. Kellner makes the very serious accusation that the 1917 Code of Canon Law is corrupt and contradicts Catholic dogma:

"The suspicion arises that here a dogmatic falsification brought about by Freemasonic influences in the "Codex Juris Canonici" edited in 1917 is at stake by which it was made possible to smuggle easily Freemason into sacerdotal and episcopal positions of the Catholic Church in order to destroy it."
--- Kellner

The suspicion arises that Dr. Kellner confidently wrote about things for which he knew very little about. This suspicion, and accusation, of his was previously declared by the Church to be false, rash, scandalous, dangerous, and more.

"as if the Church which is ruled by the Spirit of God could have established discipline which is not only useless and burdensome for Christian liberty to endure, but which is even dangerous and harmful and leading to superstition and materialism, – false, rash, scandalous, dangerous, offensive to pious ears, injurious to the Church and to the Spirit of God by whom it is guided, at least erroneous." (n.78, DZ 1578)

--- Pope Pius VI. *Auctorem Fidei*. 1794.

As the theologians teach, the reason the Church cannot establish a dangerous and harmful law is grounded on the *indefectibility* of the Church. If the Church did establish such a law, the Church would be defective, which is impossible.

Dr. Kellner seems to have begun suspecting the 1917 CIC to be corrupt while investigating the effects of Lienart's supposed Freemasonry and noticing that the 1917 CIC's laws on the reception of Orders don't fit with his own understanding of doctrine concerning the reception of Orders. Considering the implications of the Church promulgating corrupt, defective, and anti-Catholic laws, it would've been more prudent for Dr. Kellner to question his own understanding of these matters, before questioning the Church's authoritative laws on them. However, not only does it appear that he never stopped to question whether his own understanding was correct, but he went as far as to spread his erroneous suspicions and doubts publicly.

Let us try to forget, for a moment, the fact that Dr. Kellner is arguing that the Catholic Church can be defective, and let's look at his arguments for why he thinks the Church's laws are

defective and corrupt. In doing so, it will be further illustrated that Dr. Kellner was profoundly ignorant about the serious matters he wrote about.

Dr. Kellner argues that two points of doctrine have been contradicted in the 1917 CIC. One involves the reception of orders and canons 968 and 985. The other involves Protestant baptism. Apart from these two things, he doesn't attempt to show any other corruption in the 1917 CIC.

Dr. Kellner begins his argument that the 1917 CIC is corrupt by stating that, according to canon 2335, a person incurs an automatic excommunication when they become a Freemason.

"Lienart, by his membership in Freemasonry, had performed his apostasy from the Catholic faith and in so doing had contracted, according to canon 2335 CIC, an automatic excommunication..."

(Kellner)

He is correct here, in that membership in Freemasonry incurs an automatic excommunication, according to canon 2335. However, Dr. Kellner continues with what is most of the foundation of his argument that the Code is corrupt:

"...and, according to canon 968 CIC, a perpetual impediment forbidding primarily the reception of Orders and secondarily the exercise of Orders already received."

(Kellner)

What Dr. Kellner says concerning canon 968 in this last sentence is not entirely correct. Compare Dr. Kellner's statement about canon 968 with canon 968 itself.

"Can. 968

1. Sacram ordinationem valide recipit solus vir baptizatus; licite autem, qui ad norman sacrorum canonum debitum qualitatibus, iudicio proprii Ordinarii, praeditus sit, neque ulla detineatur irregularitate aliove impedimento.

2. Qui irregularitate aliove impedimento detinentur, licet post ordinationem etiam sine propria culpa exorto, prohibentur receptos ordines exercere.

Only a baptized male can validly be ordained. In order to receive orders licitly, the candidate must, according to the judgment of the Ordinary, be endowed with the qualities required by the sacred canons and free from any irregularity or canonical impediment.

Those who have incurred an irregularity or other impediment, even after ordination and without their own fault, are not allowed to exercise the orders they have received."

--- Augustine, Rev. P. Chas. D.D.A Commentary on the New Code of Canon Law. Book III. Vol.IV. 1920. p.444

According to Dr. Kellner, an impediment is contracted by canon 968 for either excommunication or apostasy. However, canon 968 does not say this. Nothing in this canon attaches an impediment or irregularity to anyone, nor speaks of excommunication or apostasy.

Canon 968, instead, states the Church law in regards to the reception of Orders for those who have *already* incurred an irregularity or other impediment.

So far, this seems like a minor mistake on the part of Kellner, either in his understanding, or simply in the way he worded his sentence. At this point, it might almost sound as if he was just trying to say an impediment was incurred by another canon and canon 968 forbids the reception and exercise of orders by those with an impediment. However, as he continues writing, it becomes apparent that he did not simply make a grammatical mistake. Dr. Kellner does, indeed, believe that an impediment can somehow be incurred by canon 968, as his next statement goes to show:

“The wording ‘A perpetual impediment forbidding the reception of Orders’ at first glance seems to indicate, at least in connection with apostasy, that Orders performed in the presence of such an impediment are invalid.”
(Kellner)

His idea that an impediment can be incurred by canon 968, despite the actual words of canon 968 not stating this, is only part of the crux of Dr. Kellner’s argument that the 1917 CIC is corrupt. He also, apparently, doesn’t fully understand the concept of an impediment, which plays a role in why he thinks the Code is corrupt, but that will be dealt with later. As a result of thinking an impediment is incurred by canon 968, coupled with other misunderstandings, Dr. Kellner developed the idea that canon 968 contradicts canon 985. The contradiction, to him, is that canon 968 invalidates Orders under the exact same circumstances that canon 985 would only call them illicit, but valid. Dr. Kellner says:

“But, as is evident from the text of canon 985.1 CIC which, strangely enough, designates apostasy only as an “irregularity,” they are only illicit, but not invalid. This is probably the reason why Lefebvre regards his Orders received from Lienart as at least valid...”
(Kellner)

It's apparent by this statement that Kellner not only thinks an impediment can be incurred by canon 968, but that canon 968 and/or an impediment invalidates the reception of Orders. It's just been shown that canon 968 does not attach an impediment to anyone, but it is also clear that, besides the reference to baptized males, nowhere does canon 968 affect the validity of orders. Apart from the reference to baptized males, canon 968 only affects the licity of the reception of Orders. Canon 968 forbids those with an irregularity or other impediment from exercising their Orders, which concerns licity, not validity. This point should be enough to show that there is no contradiction between canon 968 and canon 985, and that Dr. Kellner has a confused understanding of Church law.

His confusion and lack of knowledge becomes even more apparent from his statements about *impediments* and *irregularities*. For him, impediments and irregularities are two very distinct things in canon law. He believes an impediment prevents a man from validly receiving Orders, while an irregularity only prevents a man from licitly receiving Orders, but does not affect the validity. He also believes impediment is greater than irregularity, as he shows here:

"In an obvious dogmatic contradiction to canon 985.1 CIC which, as was just mentioned, represents apostasy only as an "irregularity," but not as an impediment to the reception of valid Orders..."

(Kellner)

By his statements, Dr. Kellner shows that he hardly understands impediments and irregularities at all. Contrary to what Kellner believes, an impediment is actually less than irregularity; and, while there is very little difference between the two, irregularity *is* an impediment, only to a higher degree, as Bouscaren and Ellis' Canon Law commentary shows:

"Nature of Irregularity and simple Impediment. An irregularity may be defined as a perpetual impediment established by ecclesiastical law forbidding primarily the reception of orders and secondarily the exercise of orders already received (c.968). A simple impediment differs from an irregularity only in this that it is not perpetual; that is, it is of such a nature that it can cease to exist in the course of time."

--- Bouscaren, T. Lincoln, S.J., and Ellis, Adam, S.J. *Canon Law: A Text and Commentary*. 1946.p.371 (commentary on canon 983).

Remember that, concerning the reception of Orders, Dr. Kellner's complaint about the 1917 CIC is about the use of the words "irregularity" in one place and "perpetual impediment" in another, and his belief that these are two very distinct things. He actually calls this an "obvious dogmatic contradiction". Considering, as Bouscaren and Ellis state, that "an irregularity may be defined as a perpetual impediment", it becomes obvious that Dr. Kellner is largely ignorant about the subject he is writing about. The commentary below, from Charles Augustine's 1920 commentary on canon 968, provides more information on impediment and irregularity, which illustrates just how mistaken Dr. Kellner was and what little knowledge he had of the subject.

"§ 1 defines who are *capable* of receiving orders validly, and who may receive them licitly according to canon law. Two conditions are required for valid ordination, viz.: the male sex and Baptism. The following classes of person are therefore *incapable of being validly ordained*: (1) Women... (2) Incapable of validly receiving orders are also men who are *not baptized*..."

The other class of persons mentioned in our canon are those who may receive orders validly, but *not lawfully*. They are either irregular or suffer from a canonical impediment. This is a new regulation, for thus far a distinction was made only between incapacity and irregularity. Now a strictly so-called canonical impediment is introduced, which is less than irregularity.

Irregularity is derived from the Latin *contra regulam*, and as a canonical term seems to occur first in a work of Peter of Blois (+ 1200). It signifies general inability established by law, for there is no irregularity except it be expressed in the law (can. 983). The *effect* of this inability consists in forbidding one from being licitly ordained and from exercising the orders received. In this respect there is no distinction between irregularity and the simple canonical impediment, as § 2 of our canon plainly states. Where, then, is the difference between both? It must be sought in the higher degree of inability and in the secondary effect attaching to irregularity. For irregularity, although *per se* no penalty, yet may originate from guilt, which is followed by penalty constituted in

law, for instance, in the case of homicide and others mentioned in can. 985. One who is simply suffering from an impediment is not supposed to have incurred a guilt in the proper sense of the term, even though *infamia facti* might be imputable to him. The consequence is that one who, while suffering from a simple canonical impediment, receives or exercises an order, should not be punished as severely as one afflicted with irregularity. Any other distinction between irregularity and the canonical impediment proper, is, we believe, difficult to establish."

--- Augustine, Rev. P. Chas. D.D. A Commentary on the New Code of Canon Law. Book III. Vol. IV. 1920. pp.444-445.

So, why would Dr. Kellner have assumed that an impediment affects validity, when Catholic sources show that it generally only affects licity, and not validity? One possibility is that Dr. Kellner had gotten impediments in general confused with *diriment* impediments to marriage. Diriment impediments do actually affect validity, as they make a marriage invalid by invalidating the marriage contract.

"§ 1. A *prohibitive* impediment implies a grave prohibition of contracting marriage, but does not render it invalid if contracted.

§ 2. A *diriment* impediment both gravely forbids marriage and prevents it from being contracted validly.

§ 3. Even when the impediment exists only on one side, it renders marriage illicit or invalid."

--- Augustine, Book II, Vol. V, 1920. canon 1036, p.83.

Diriment impediments are unique to the Sacrament of Matrimony and have no relevance to any other sacrament. This is because the Sacrament of Matrimony is unique in that it is also a contract. The contract itself constitutes the sacrament. Since Matrimony is a contract, not just a sacrament, the Church has a control over the validity of Matrimony that it doesn't have for any other sacrament. The Church can make, change, and dispense from ecclesiastical laws which determine the necessary requirements for this contract to be valid. The validity of the contract, consequently, affects the validity of the sacrament. The following passages, from various Catholic sources, will demonstrate this.

"...marriage, although a sacrament, is also a contract, and... all the essential elements of a contract are found in the consent of the parties; but even for consensual contracts a certain form may be prescribed by positive law."

--- Ayrinhac, Rev. H.A. *Marriage Legislation in the New Code of Canon Law.* 1919 p.229.

"That marriage is a sacrament has always been the belief and teaching of the Church.(Trent, Sess. Xxiv, de Mat., can. 1.) That the marriage contract itself constitutes the sacrament has not always been so clearly understood."

--- Ayrinhac, p.22.

"The contract of marriage between certain persons and in certain cases is null and void by the law of God, natural and revealed. So far Protestants are at one with us, for they would not dream of holding that marriage between father and daughter or brother and sister was valid. But Catholics further maintain with the Council of Trent (Sess. Xxiv. De Matrimon. Can. 4) that the Church may institute impediments which nullify the contract of marriage. The principle on which this tenet rests is a very simple one. Marriage between baptized persons, according to the Catholic doctrine, is a sacrament, and therefore this contract falls under ecclesiastical authority. Just as the State may pronounce certain natural contracts which are lawful in themselves null and void – just as, for example, it may for the general good nullify certain engagements made by minors or at play, so the Church may interfere with the freedom of the marriage contract."

--- Addis, William Edward and Arnold, Thomas, M.A. *A Catholic Dictionary*. 1893. pp.435-436.

"Canon law uses the word impediment in its restricted and technical sense, only in reference to marriage, while impediments to Holy orders are spoken of as irregularities (q.v.). We may remark, however, that several real impediments or obstacles to the reception of Holy orders are not called irregularities: thus, women and unbaptized persons, who are by Divine law incapable of being ordained, are not termed irregular. But speaking of matrimony, the word impediment refers to all obstacles, whether arising from natural or Divine law. Another interesting fact is that whereas the word impediment has thus acquired a precise technical meaning in canon law, the cognate words *impedire*, *impediens*, *impeditus*, have preserved their wide grammatical signification and may be applied to other matters; so writers speak of those unable to go personally to Rome to be absolved from censures as *impediti adire Romam*, and the Constitution "Apost. Sedis" speaks of those who hinder (*impedientes*) the exercise of ecclesiastical jurisdiction.

...The fundamental idea of an impediment to matrimony is contained implicitly in the well known prohibitions of Leviticus and some ancient canonical texts; in the latter may be discovered the basis of the celebrated distinction between diriment impediments which render a marriage null and void, and prohibitory impediments which only render it illicit; sometimes the canons of councils insist on the separation of the parties who have violated the law, which implies that the marriage was void; sometimes, on the contrary, they exact only an expiation or reparation, without dissolving the conjugal union, which implies that the marriage was valid though more or less in opposition to the law."

--- Boudinon, Auguste. "*Canonical Impediments*." *The Catholic Encyclopedia*. Vol. 7. 1910.

Because the word "impediment" has been used more often in society to refer to marriage, than to anything else, and in this regard it is often in reference to those *diriment* impediments that invalidate a marriage; Dr. Kellner may likely have unwittingly developed the idea that the word impediment always meant an obstacle to validity. As was shown, this is far from true, and Dr. Kellner should have attempted to understand Church laws before publicly making claims based

on his own assumptions. Out of his erroneous assumptions, Dr. Kellner concludes that the “dogmatic correctness” of canon 985 must be “strongly doubted”:

“In consideration of the just-developed arguments, the dogmatic correctness of the stipulation of canon 985.1 CIC determining that the apostasy of a candidate for Holy Orders represents only an irregularity making his Orders only illicit, but not invalid must be doubted strongly. The suspicion arises that here a dogmatic falsification brought about by Freemasonic influences in the "Codex Juris Canonici" edited in 1917 is at stake by which it was made possible to smuggle easily Freemason into sacerdotal and episcopal positions of the Catholic Church in order to destroy it.”

(Kellner)

However, as it's been shown, Dr. Kellner's argument is based on ignorance, with no foundation at all. There is no reason to doubt the dogmatic correctness of canon 985 or hold the rest of the 1917 CIC as suspicious, especially considering this would be claiming that the Church has defected.

Apart from the laws concerning the reception of Orders, Dr. Kellner claims to have identified one more area in the 1917 CIC that is corrupt:

“I have started an investigation of the circumstances involved. In this connection, I direct the attention to the recognition of the validity of the Protestant baptisms by the Canon Law of 1917 which contradicts a definition of the Council of Trent (Denzinger 863) and, therefore, Catholic doctrine, as I mentioned in my article No. 70, pages 12ff. This case, too, could have been caused by Freemasonic influences.”

(Kellner)

Without reading Kellner's article No. 70, it's unclear exactly what canon law, or laws, he believes contradicts a definition of the Council of Trent. He says canon law contradicts Denzinger 863, which, states:

“863 Can. 7. If anyone shall say that those who are baptized are by baptism itself made debtors to faith alone, and not to the observance of the whole law of Christ: let him be anathema [cf. n. 802].”

--- Denzinger. *The Sources of Catholic Dogma. Henry Denzinger's Enchiridion Symbolorum, 13th ed.* translated by Roy J deferrari. 1954. p.264.

Denzinger 863 has nothing to do with the validity of Protestant baptisms, which makes it seem as though Dr. Kellner might have meant to cite another section in Denzinger. Since he was clear that it was the Council of Trent that he thought was contradicted by the 1917 CIC, here is what the Council of Trent had to say about baptism given by heretics:

“860 Can. 4. If anyone shall say that the baptism, which is also given by heretics in the name of the Father and of the Son and of the Holy Spirit, with the intention of doing what the Church does, is not true baptism; let him be anathema.”

--- Denzinger 860, p.262

It seemed as though Kellner was claiming that the 1917 CIC recognized the validity of Protestant baptisms, while the Council of Trent did not; but this canon of the Council of Trent runs completely contrary to what seems to be Kellner's claim. Dr. Kellner would even be under the Council of Trent's anathema, if he was claiming baptisms by heretics are invalid.

It may be that Dr. Kellner thought that Protestants in particular, as opposed to other possible heretics, couldn't possibly have the sufficient *intention* required for valid baptisms. However, all Catholic sources, before and after the 1917 CIC, that deal with Protestant baptisms have always recognized them as valid, as long as there weren't substantial changes to the prescribed matter and form. To illustrate just how far off Dr. Kellner's claim would be, if it was what he was claiming, here is an excerpt from Rev Raphael De Salvo's "The Dogmatic Theology on the Intention of the Minister in the Confection of the Sacraments", which includes an interesting statement by the Holy Office in 1877.

"The Bishop of Nesqually had addressed to the Propaganda an inquiry concerning the validity of baptisms conferred by Methodists, against the validity of whose baptisms he alleged an insufficient and adverse intention and consequently the presumption of invalidity. The Bishop stated that the Methodists held so many errors about the necessity, the power, and the efficacy of the sacrament of Baptism that they considered it merely an indifferent rite which had been entirely omitted in the past and at a later time had been put into use again for the purpose of deceiving the faithful and attempting to show them that their false religion did not differ from the true religion. (Sacra Congregatio Sancti Officii, Jan.24, 1877--CSCPf, n.1465, Vol.II, pp.99-100 sqq.)

To this question the Holy Office gave a very detailed answer which is one of the most explicit statements about the intention of doing what the Church does. In substance the reply lays down the following principles:

1. It is a dogma of faith that Baptism administered by anyone, whether a schismatic, a heretic, or even an infidel, must be considered valid, as long as in their administration those things are present by which the sacrament is perfected, namely, due matter, the prescribed form, and the person of the minister with the intention of doing what the Church does. Hence it follows that the peculiar errors which the ministers profess either privately or publicly do not at all affect baptism or any other sacrament.

2. The errors which the heretics profess privately or publicly are not incompatible with that intention which the ministers of the sacraments must have, namely, of doing what the Church does. Those errors in themselves cannot give rise to a general presumption against the validity of the sacraments in general and baptism in particular.

From these principles taken from the decision of the Holy Office it must be concluded that as a general rule the baptisms of heretics are valid in spite of the fact that their ministers hold beliefs entirely incompatible with the Catholic doctrine concerning Baptism, and deny all power of regeneration in that sacrament. Their error does not offer sufficient reason to conclude that they have an insufficient or adverse intention in regard to conferring the sacrament."

--- De Salvo, Rev. Raphael. *The Dogmatic Theology on the Intention of the Minister in the Confection of the Sacraments*. 1949. pp.28-29.

Dr. Kellner's claim about a dogmatic contradiction in the 1917 CIC in regard to the validity of Protestant baptisms can't be analyzed any further, without having access to his article No.70. It is, however, highly likely that this claim is based on ignorance, just as were his claims regarding the reception of Orders.

No other instances of supposed corruptions in the 1917 CIC were claimed to be found by Dr. Kellner, unless he mentioned them in one of his other articles and did not reference them in article No.72. It's been shown that Dr. Kellner truly didn't know what he was talking about in these matters, yet he was not afraid to call his claims "certain" further on in his article. He claimed that the 1917 CIC should be "doubted strongly" and held with suspicion; but in light of the bold and confident way he puts forth these unsubstantiated, poorly researched, yet very serious claims, it is Dr. Kellner that should always be doubted strongly and held with the highest suspicion.